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Docket: 0113US-Goffer

Application #: 09/864,845

Inventor: Amit Goffer

Filed on: May 24, 2001

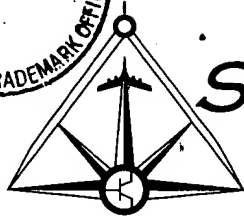
Title: Gait Locomotor Apparatus

This correspondence contains:

1 Page Petition for 1 Month Extension of Time
3 Pages Response to Restriction Requirement

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In the United States Patent and Trademark Office

In re application of: Amit Goffer	
For: Gait Locomotor Device	
Serial No./Confirm.: 09/864,845	Group: 3764
Filed on: May 24, 2001	Examiner: Jerome W. Donnely
Correspondence Date December 19, 2003	Docket: 0113US-Goffer

Response to Restriction Requirement

Honorable Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Sir:

This communication is in response to a restriction requirement mailed to applicant November 14th 2003. Examiner placed a restriction requirement between claims 1-11 and 23-61 as drawn to an apparatus and claims 62-68 as drawn to a method of use. Applicant respectfully submits that the restriction requirement is flawed and requests clarification for the following points:

1. Applicant submits that the Examiner erred in classifying the method and apparatus claims into two separate statutory classes.

More specifically, the Examiner stated that the apparatus claims fall under class 602, subclass 23. Class 602 relates generally to braces and splints. The description of class 602/23 reads in part: *appliance which is specially adapted to be applied to a person's leg to treat a bone disorder or the muscles associated therewith so that a more normal orientation of the body components is achieved.*

The Examiner also stated that the method claims are classified in class 607, subclass 49. Class 607 in general relates to Surgery: Light thermal and electrical application. The description of class 607/49 reads in part: *Subject matter wherein the stimulation is applied to leg muscles or nerves to assist the patient during locomotion.*

However none of the method claims presently pending in the application refer to directly stimulating the leg muscles or nerves, or other application of light, thermal, or electrical stimulation, and therefore, the classification and sub classification provided by the Examiner are clearly erroneous.

2. On the other hand, the method claims require essentially all the limitations of the independent apparatus claim. Therefore, the claimed method cannot be practiced without the apparatus. The process claim and the apparatus claim share very similar preamble, and a limitation in the body of the claim (rather than the preamble alone) points to the same field, operational mode and use, of the apparatus and the method requiring its use. It therefore stands to logic that the two aspects of the present invention fall into the same class. Applicant submits that failing a clear and convincing reason to the contrary, the method and apparatus claims should be classified in the same statutory class. Applicant respectfully submits that the Examiner mistakenly classified the method aspect and the apparatus aspect of the present invention in different classes.
3. In case of restriction of invention in the same class, two way distinctness is required. The Examiner failed to show two way distinctness, and thus meet his burden.
4. Applicant further calls the Examiner's attention to the following:

MPEP 803 provide:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) *The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and*
- (B) **There must be a serious burden on the examiner** *if restriction is required (see MPEP § 03.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02). (emphasis added)*

GUIDELINES

Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the restriction requirement in most cases. Where plural inventions are capable of being viewed as related in two ways, both applicable criteria for distinctness must be demonstrated to support a restriction requirement. If there is an express admission that the claimed inventions are obvious over each other within the meaning of 35 U.S.C. 103, restriction should not be required. In re Lee, 199 USPQ 108 (Comm'r Pat. 1978). (emphasis added)

For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. That prima facie showing may be rebutted by appropriate showings or evidence by the applicant.

5. Applicant respectfully submits that the Examiner did not show any serious burden to examine the apparatus and method claims together.
6. Applicant therefore traverses the restriction requirement, and respectfully requests that the Examiner will reconsider and withdraw the requirement. Alternatively, applicant respectfully requests that the Examiner will provide reasoning for the classification of the method and apparatus claims and show the serious burden required to examine the claims separately.
7. As required by 37 CFR §1.143, applicant provisionally elects, under traverse and under protest, claims 1-11 and 23-61, should the Examiner refuse to withdraw the unjustified restriction requirement.

Respectfully submitted

Shalom W.

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